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IN THE

Supreme Court of the United States

October Term, 1970

Supreme Court, U.S.

FILED

SEP 9 1971

E. ROBERT SEAVER, CLERK

No. 1480

(Now No. 70-98)

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
against

RUDOLPH SANTOBELLO,

Petitioner.

On Writ of Certiorari to the Appellate Division of the
Supreme Court of the State of New York,
First Judicial Department

Petition for Certiorari Filed March 18, 1971

Certiorari Granted May 29, 1971

SUPPLEMENTAL APPENDIX

BURTON B. ROBERTS
District Attorney
Bronx County
Attorney for Respondent
851 Grand Concourse
Bronx, New York 10451
(212) 588-9500

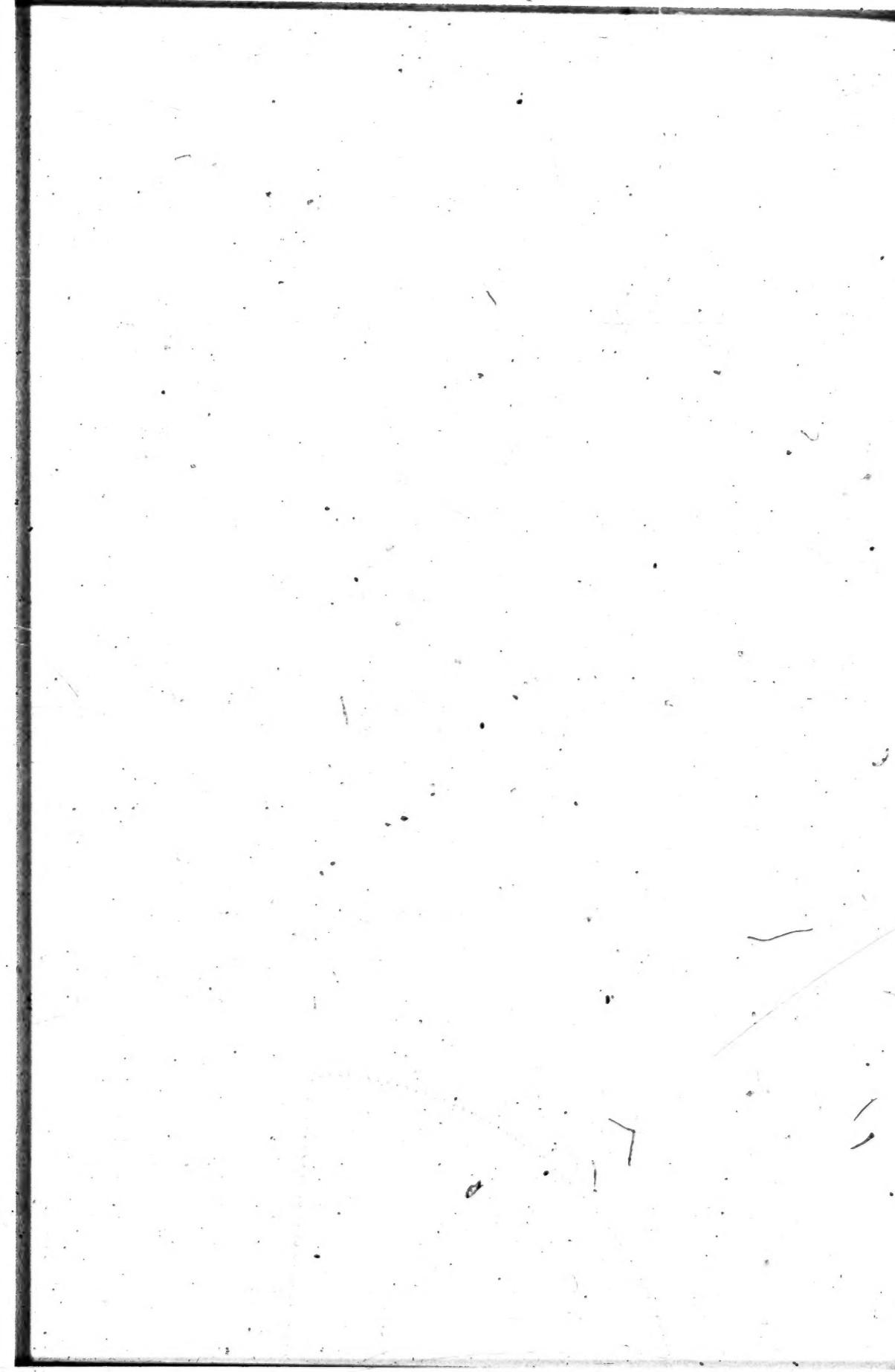


TABLE OF CONTENTS

	PAGE
Motion to Suppress Evidence	43a
Affidavit of Rudolph Santobello, Sworn to April 19, 1969, in Support of Motion to Suppress Evidence	45a
Endorsements on Motion to Suppress Evidence	47a
Motion to Inspect Grand Jury Minutes, or in the Alternative, to Dismiss the Indictment	48a
Affidavit of Rudolph Santobello, Sworn to September 29, 1969, in Support of Motion to Inspect Grand Jury Minutes, or in the Alternative, to Dismiss the Indictment	49a
Affirmation of Joseph Aronstein, Esq. in Support of Motion to Inspect Grand Jury Minutes, or in the Alternative, to Dismiss the Indictment	51a
Proceedings of June 17, 1969	
Motion to Suppress Evidence	53a
Proceedings of June 30, 1969	
Motion to Suppress Evidence	55a
Proceedings of September 16, 1969	
Possession of Gambling Records	57a
Proceedings of September 23, 1969	
Possession of Gambling Records (misd.)	59a

Proceedings of October 8, 1969	
Possession of Gambling Records (Misdemeanor)	63a
Proceedings of October 23, 1969	
Possession of Gambling Record	67a
Proceedings of October 29, 1969	
Motion to Withdraw Plea—Possession of Gam- bling Records (misdemeanor)	70a
Proceedings of November 26, 1969	
Motion to Withdraw Plea—Poss. of Gambling Records, Misd.	72a
Proceedings of December 15, 1969	74a
Letter from the Bronx County Clerk to the Clerk of the Supreme Court of the United States Concern- ing Certification of the Original Record from the Supreme Court of the State of New York, County of Bronx	76a

Motion to Suppress Evidence

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

THE PEOPLE OF THE STATE OF NEW YORK,

against

RUDOLPH SANTOBELLO,

Defendant.

SIR:

PLEASE TAKE NOTICE that upon all of the proceedings heretofore had herein and upon the annexed affidavit of Rudolph Santobello duly verified the 19th day of April, 1969, the undersigned will move this Court at Part XII thereof, at the Courthouse, located at 851 Grand Concourse, in the County of Bronx, City and State of New York, on the 17 day of June, 1969, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order, pursuant to the Code of Criminal Procedure, granting a hearing for the purpose of suppressing and returning evidence allegedly seized herein and suppressing all statements obtained as a result of said illegal search and seizure, upon the ground that the evidence allegedly was seized in violation of the defendant's rights under the Constitutions and Statutes of the United States and the State of New York, together with such other, further and

Motion to Suppress Evidence

different relief as to this Court may seem just and proper
in the premises.

Dated: New York, New York
April 12, 1969

Yours, etc.,

Fruchtman and Lindenauer
Attorneys for Defendant
Office & P.O. Address
250 West 57th Street
New York, New York
PL 7-4555

To:

Hon. Burton B. Roberts
District Attorney
Bronx County

**Affidavit of Rudolph Santobello,
Sworn to April 19, 1969,
in Support of Motion to Suppress Evidence**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

[SAME TITLE]

State of New York)
County of)
City of New York) ss.:

RUDOLPH SANTOBELLO, being duly sworn, deposes and says:

That he is a defendant in the above entitled action and makes this affidavit in support of the within motion for an order, pursuant to the Code of Criminal Procedure, granting a hearing for the purpose of suppressing and returning the evidence allegedly seized herein, upon the ground that the evidence allegedly seized was seized in violation of your deponent's constitutional rights.

On or about the 9th day of December, 1968, your deponent was indicted by the Grand Jury of Bronx County and charged with the crime of promoting gambling in the first degree and the crime of possession of gambling records in the first degree.

Your deponent denies that the officer observed him engaged in any illegal activity.

The arrest of your deponent was without probable cause and without either a search warrant and/or an arrest warrant.

Affidavit of Rudolph Santobello

Your deponent is a person aggrieved by an illegal search and seizure which occurred on November 13th, 1968.

As a result of this illegal arrest and unreasonable search and seizure following it, the evidence seized hereunder was seized contrary to law and in violation of your deponent's rights, pursuant to the Constitution of the United States, the Constitution of the State of New York, and the Code of Criminal Procedure, and should be suppressed and returned.

That no other application has been made for the relief prayed for herein to any other Court or judge thereof.

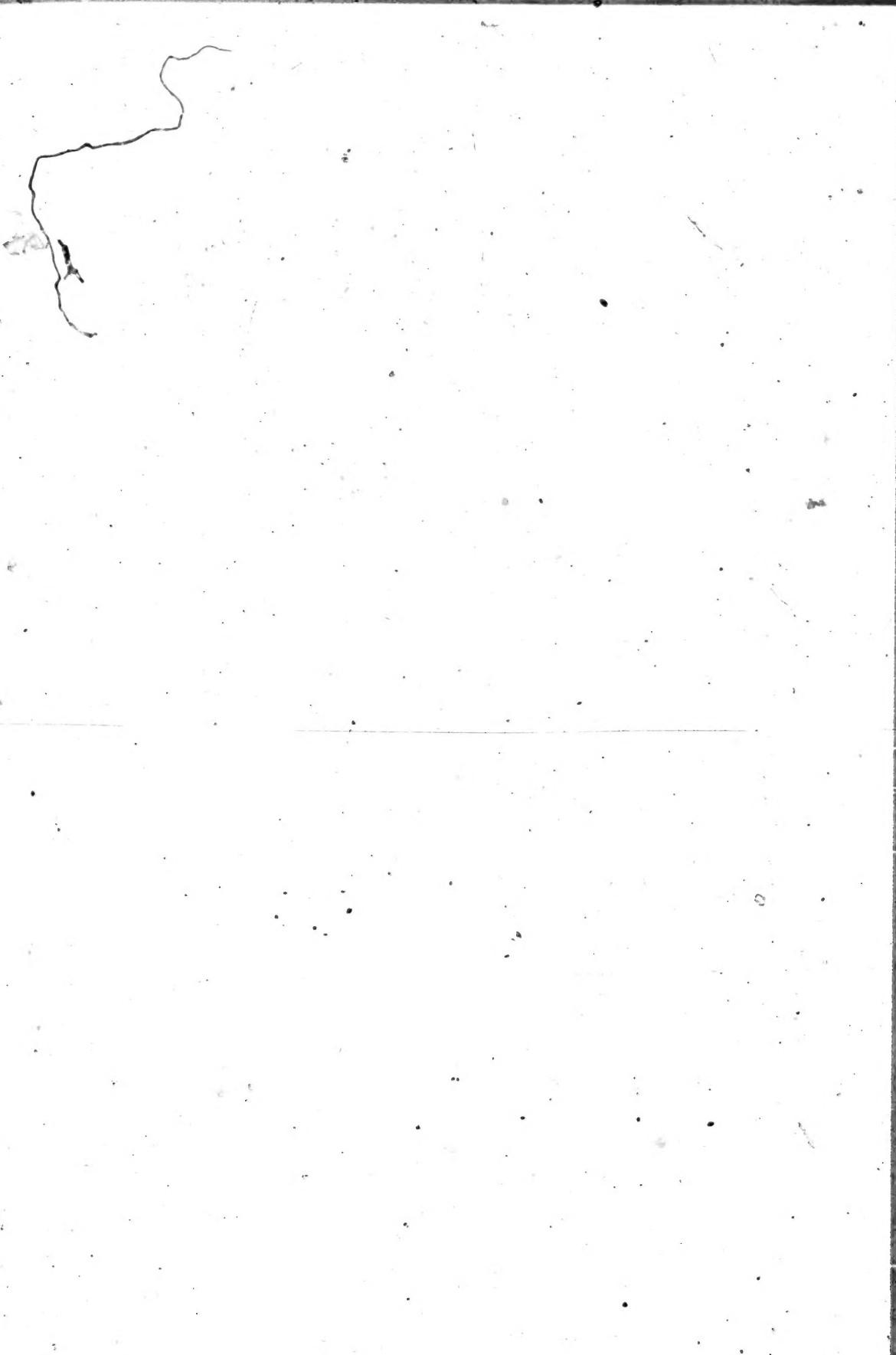
WHEREFORE, your deponent respectfully prays that an order be made granting a hearing to your deponent for the purpose of suppressing and returning the evidence allegedly seized in violation of the rights of your deponent under the Constitutions and Statutes of the United States and the State of New York, and for such other, further and different relief as to this Court may seem just and proper in the premises.

Rudolph Santobello

(Sworn to April 19, 1969.)

Endorsement on Motion to Suppress Evidence

(See Opposite ~~page~~)



**Motion to Inspect Grand Jury Minutes, or in the
Alternative, to Dismiss the Indictment**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Rudolph Santobello, sworn to the 29th day of September, 1969 and upon the affirmation of Joseph Aronstein, dated September 29, 1969, the attorney for the above named defendant, and upon all the proceedings heretofore had herein, the undersigned will move this Honorable Court, at a Term thereof to be held on the 8th day of October, 1969, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, at the Court House, 161 Street and Grand Concourse, County of Bronx, City and State of New York, for an Order for the inspection of the minutes of the Grand Jury that returned indictment #3024-1968, against the defendant upon the grounds set forth in the affidavits herein, or, in the alternative, for an Order dismissing the Indictment and for such other and further relief as may be just and proper.

Dated, New York, N.Y.

September 29, 1969

Yours, etc.,

Joseph Aronstein
Attorney for Defendant
Office & P.O. Address
1650 Broadway
New York, N.Y. 10019
Telephone PL 7-8671

To:

Clerk of Court;

Hon. Burton D. Roberts
District Attorney
Bronx County

**Affidavit of Rudolph Santobello,
Sworn to September 29, 1969, in Support of
Motion to Inspect Grand Jury Minutes, or in the
Alternative, to Dismiss the Indictment**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

[SAME TITLE]

State of New York)
County of Bronx) ss.:

Rudolph Santobello, being duly sworn, deposes and says: that he is the above named defendant and that he has been indicted by the Grand Jury of Bronx County, Indictment #3024-1968 charging violation of the Gambling Laws of the State of New York in two counts.

Deponent states that he has read the Information filed against him in the Criminal Courts of the County of Bronx November 13, 1968, duly sworn to by Police Officer F. Serpico, and that he has been informed by his attorney, Joseph Aronstein, that said Information fails to allege that the slip of paper that he removed from the compartment in the wall of the building was a paper containing writings representing plays of Mutual Race Horse Policy that had been received by deponent from a person other than a player, and that the failure to negative this exception contained in the statute is fatal to the validity of the said Information, and, that deponent has been further informed by Joseph Aronstein that based upon the sworn Information of Officer Serpico, the testimony given by Officer Serpico upon which the indictment is founded is lacking in this important testimony, and the failure of the People

Affidavit of Rudolph Santobello

before the Grand Jury to adduce evidence that the slip of paper removed by Officer Serpico from the compartment in the wall of the building was received by deponent from a person other than a player would result in insufficient legal evidence upon which the indictment is founded.

Wherefore, deponent respectfully prays that this Court make an Order granting an inspection of the minutes of the Grand Jury upon which the indictment herein is based, or in the alternative, for an Order, dismissing the Indictment, and for such other and further relief as may be just and proper, for which no previous application for the relief herein prayed for has heretofore been made.

Rudolph Santobello

(Sworn to September 29, 1969.)

**Affirmation of Joseph Aronstein, Esq.,
Dated September 29, 1969, in Support of Motion to
Inspect Grand Jury Minutes, or in the Alternative,
to Dismiss the Indictment**

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

[SAME TITLE]

Joseph Aronstein, attorney at law, does hereby affirm, under the penalties of perjury, pursuant to the provisions of Section R2106, C. P. L. R. that he is the attorney for the above entitled defendant and that he is personally familiar with all of the facts of this case.

Deponent states that he has read the indictment, 3024-1968, filed against the defendant and that such indictment contains two counts, Count 1, charging that the defendant did receive on November 13, 1968, in connection with a lottery and policy scheme and enterprise, written records from a person other than a player whose chances and plays were represented by such records, and Count 2, charging that the defendant was in possession of gambling records, in that he did on November 13, 1968, possess with knowledge of the contents thereof, writings, etc., reflecting and representing more than five hundred plays and chances of a kind commonly used in the operation and promotion of a lottery and policy scheme.

Deponent has read the Information filed against this defendant November 13, 1968 in the Criminal Court, County of Bronx, duly sworn to by Officer Serpico and that said Information does not negative the exception contained in the statute, to wit, that the policy writings, etc., allegedly

Affirmation of Joseph Aronstein, Esq.

received by the defendant were received from a person other than a player.

Deponent states that based upon the sworn Information of Officer Serpico that fails to negative the exception and, the fact, that according to the Information Officer Serpico was the only witness, there being no corroborating affidavit in support of the Information, the evidence adduced before the Grand Jury fails to establish that the slip of paper containing writings commonly used in the operation and promotion of a lottery and policy scheme were received by the defendant from a person other than a player and that the failure of the evidence to establish before the Grand Jury that the slip of paper containing the writings commonly used in the operation and promotion of a lottery and policy scheme were received by the defendant from a person other than a player would make such evidence insufficient to sustain the indictment.

Defendant states that Count 2 of the Indictment is duplicitous in that said count charges the same crime as is charged in Count 1 of the Indictment, since count 1 of the Indictment charges that on November 13, 1968 the defendant did receive papers and writings it follows that said count 1 charging that he had received papers and writings, said papers and writings would be in his possession, and therefore Count 2 of the Indictment is duplicitous in that it charges the same crime as is charged in Count 1.

Deponent states that with respect to the allegations contained in the affidavit of the defendant, that he has informed such defendant with reference to those allegations as set forth therein.

Dated, New York, N.Y.
September 29, 1969.

Joseph Aronstein

Proceedings of June 17, 1969
Motion to Suppress Evidence

SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XII

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

June 17, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

For the People:

Burton B. Roberts, Esq.

District Attorney, Bronx County

By: Seymour Rotker, Esq.

Assistant District Attorney

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of June 17, 1969

Mr. Rotker: Your Honor, I think this motion which has been made previously should be abandoned because Rudolph Santobello, I believe, on the same case took a plea yesterday. He took a plea in court to a gambling violation.

The Court: We put it over to June 30th.

Mr. Rotker: May we have this motion adjourned to that date, til the date of sentence? Counsel can withdraw the motion. No counsel here.

The Court Clerk: Fruchtman & Lindenauer?

(No response)

The Court: June 30th.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes.

/s/ Miriam Benson

Miriam Benson, C.S.R.
Official Court Reporter

**Proceedings of June 30, 1969,
Motion to Suppress Evidence**

**SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XII**

Ind. No. 3024—1968

THE PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

Bronx, New York

June 30, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

Fruchtman & Lindenauer, Esqs.
Attorneys for Defendant
By: Max Fruchtman, Esq.
Of Counsel

Emily Davis, C.S.R.
Official Court Reporter

Proceedings of June 30, 1969

Mr. Fruchtman: Judge this is a plea; do you want to take the sentence now?

Court Clerk Zumpano: Do you want to withdraw the motion?

Mr. Fruchtman: Yes.

The Court: Motion withdrawn.

Mr. Fruchtman: Does your Honor want to take the sentence now?

The Court: I haven't got the papers. I have to put it over. Wednesday.

Certified to be a true and accurate transcription of the original stenographic record.

/s/ Herbert S. Reing,

Herbert S. Reing, C.S.R.
Official Court Reporter

Proceedings of September 16, 1969
Possession of Gambling Records

SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XIX

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

September 16, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

For the People:

Burton B. Roberts, Esq.
District Attorney, Bronx County
By: Maurice Sieradzki, Esq.
Assistant District Attorney

For the Defendant:

M. Fruchtman, Esq.

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of September 16, 1969

The Court Clerk: People of the State of New York against Rudolph Santobello, number 3 on the sentence calendar.

The Court: In view of the Probation Report, I'll put it over for one week. That's—

The Court Clerk: 23rd, Judge.

The Court: 23rd.

Mr. Fruchtman: May I check my calendar?

The Court: Yes.

Mr. Fruchtman: 23rd.

The Court: All right, September 23rd.

The Court Clerk: September 23rd.

The Court: Bail continued.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Miriam Benson

**Proceedings of September 23, 1969
Possession of Gambling Records (misd.)
SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XIX**

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

September 23, 1969

Before: Hon. CHARLES MARKS, Justice

Aparances:

For the People:

Burton B. Roberts, Esq.

District Attorney, Bronx County

By: Vincent Vitale, Esq.

Assistant District Attorney

For the Defendant:

Joseph Aronstein, Esq.

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of September 23, 1969

The Court Clerk: People of the State of New York against Rudolph Santobello, number 2 on the sentence calendar.

Mr. Fruchtman: If your Honor pleases, I represent Rudolph Santobello; but I understand that Aaron Stein is being substituted for me; so may I respectfully ask permission to withdraw? And I think an adjournment should be in order.

Mr. Aronstein: May I file a notice of appearance? Joseph A-r-o-n-s-t-e-i-n, 1650 Broadway. Your Honor, in this case, I prepared two motions: One to withdraw the plea of guilty, and one to suppress the evidence. I propose, after I get—it will be necessary for me to order the minutes of the sentence.

Mr. Fruchtman: Plea of guilty.

The Court: The minutes of the plea, you mean.

Mr. Aronstein: Of the plea, your Honor. In addition, there will be another motion to inspect the grand jury minutes, or in the alternative, dismissing the indictment; also a demurrer with respect to the second count of the indictment which unfortunately I haven't been able to prepare as yet.

I have prepared the motion that I showed to the assistant. I left the return date blank for the reason that I know your Honor would want to fix a date that would be convenient to the Court; and also I'll give the district attorney an opportunity to put in any answering affidavits; and I hope to also submit a memorandum of law which I'll serve upon the district attorney too.

The Court: I don't know what day I'm going to be in next month. I think it's the 20th if I'm not mistaken.

Mr. Aronstein: Your Honor, if I may suggest, if I make the motion returnable in Part XII and then have them referred to your Honor—

Proceedings of September 23, 1969

The Court: Since the matter is still before me, I suppose it would have to be referred.

Mr. Aronstein: Yes, since your Honor doesn't know what part your Honor will be in.

Mr. Vitale: Judge, I think perhaps we should take one motion at a time. In fact, the motion to withdraw the plea, I think, should be the first one because if that's denied, there's no need for the other.

The Court: Yes, then—

Mr. Vitale: So I think that one should remain in front of your Honor.

Mr. Aronstein: With respect to the motion to suppress, under a recent case, in the U.S. Appeal, Kaufman against the U.S.—

The Court: I'll be in Part XVIII.

Mr. Aronstein: Then I would like it returnable to Part XVIII. What date does your Honor—make it for the latter part of October, your Honor.

The Court: Oh, no.

Mr. Vitale: The People will accept the shortest time available to the Court.

The Court: I'm not going to make it for the latter part of October. October 8th.

Mr. Aronstein: October 8th?

The Court: October 8th.

Mr. Vitale: Will counsel please file the notice to the District Attorney's Office?

Mr. Aronstein: I'll file the—

Mr. Vitale: File through the Clerk's Office so we'll have it logged in our office, the District Attorney Clerk's Office.

Mr. Aronstein: The notice?

Mr. Vitale: Yes, the motion papers.

The Court Clerk: October 8th, your Honor?

The Court: October 8th.

Proceedings of September 23, 1969

Mr. Fruchtman: May I approach the bench, your Honor?

The Court: Yes,

(Whereupon Counsellor Fruchtman approaches the bench and confers with the Court off the record.)

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Miriam Benson

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of October 8, 1969

Possession of Gambling Records (Misdemeanor)

SUPREME COURT—BRONX COUNTY

TRIAL TERM—PART XVIII

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

October 8, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

For the People:

Burton B. Roberts, Esq.

District Attorney, Bronx County

By: Seymour Rotker, Esq.

Assistant District Attorney

For the Defendant:

Joseph Aronstein, Esq.

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of October 8, 1969

Mr. Rotker: The People were served with three motions as pertains to this case. I think it is two subsequent motions. Two motions must be held in abeyance, pending decision of the first motion, the first motion being a withdrawal of a plea of guilty heretofore entered by Rudolph Santobello to the crime of possession of gambling records as a misdemeanor.

I haven't been in Part XII, but I asked the Court in Part XII to adjourn the motion with the approval of Mr. Aronstein as it pertains to the motion to suppress and to inspect grand jury minutes, pending this Court's determination as to the motion to withdraw the plea.

Mr. Aronstein: May I say they were adjourned to October 23rd, the date we agreed on.

Mr. Rotker: All right.

Mr. Aronstein: All right?

Mr. Rotker: I also ask the Court, all motions of the Court are returnable in Part XII to forward up the motions to withdraw the plea, to your Honor, since this Court took the plea.

Mr. Aronstein: I ask the Court—

The Court: Is that on the papers to withdraw?

Mr. Aronstein: Yes.

Mr. Rotker: Yes.

Mr. Aronstein: I asked the Court to send the papers up there.

Mr. Rotker: I'm sure if they haven't been sent up, they would be sent up or they're on the way.

The Court: I haven't received them yet.

Mr. Rotker: The only thing I have, is an affidavit in opposition. I forwarded a copy to Mr. Aronstein.

Mr. Aronstein: I've received it.

Mr. Rotker: Now, briefly, the affidavit isn't long. The People would respectfully ask that this matter be set down for a hearing to determine the factual issues in this case

Proceedings of October 8, 1969

as to whether or not this defendant should be permitted to withdraw his plea.

I believe that the evidence presented in the form of affidavit at this posture is insufficient to warrant that and I would like to have a full hearing on the question, including having an opportunity to speak with the—or to call as a witness Mr. Fruchtmann who represented Mr. Santobello at the time of the original plea.

I believe that the questions raised with regard to this matter, warrant a full determination of the factual issues here on the grounds raised by the defendant in his moving papers to withdraw his plea, claiming he was unaware of certain constitutional rights, and the fact that the Court in some way erred in the taking of the plea; since those are the bases of his application, I think that a hearing should be had.

The Court: Do you have a copy of the application?

Mr. Rotker: I've got my copy, Judge.

The Court: I just want to look at it for a moment.

Mr. Rotker: I have my copy.

Mr. Aronstein: I have the minutes of the—

The Court: It probably will be up sometime during the week.

Mr. Greenfield: We have the minutes in the matter.

Mr. Aronstein: I would like to tell Mr. Rotker the case I'm just relying on, the case that was just decided in the U.S. Supreme Court, the October term of 1968.

The Court: That's a year ago, you mean?

Mr. Aronstein: McCarthy against the U.S. but it was only announced April 2nd, 1969.

The Court: I'm familiar with it.

Mr. Aronstein: Yes, and—

The Court: There's a motion in another matter on which I was a witness in the Federal Court.

Mr. Aronstein: Yes, and a certain Judge—

Proceedings of October 8, 1969

The Court: And a certain judge decided a certain matter which is now up on appeal in the Circuit Court of Appeals.

Mr. Aronstein: And I intended to tell Mr. Rotker about this case which I'm sure he must be familiar with; so can we have this put down for the 23rd, your Honor, the same time we have the other?

Mr. Rotker: I understand, your Honor, I don't have McCarthy, but I understand there was a cut-off date set down on McCarthy. I'm not sure what the dates are with the Supreme Court, and the cut-off dates—before it is good, and after it is no good. I would like to be given an opportunity to at least review that, but I would ask the Court to specifically set the matter down for a hearing; and I can subpoena witnesses for that day.

The Court: Do you want the 23rd?

Mr. Rotker: The 23rd is convenient for the People if it is convenient for the Court.

The Court: 23rd then.

Mr. Rotker: Thank you.

The Court: Bail continued, October 23rd, hearing.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Miriam Benson

Miriam Benson, C.S.R.
Official Court Reporter

**Proceedings of October 23, 1969
Possession of Gambling Record**

**SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XVIII**

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

October 23, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

For the People:

Burton B. Roberts, Esq.
District Attorney, Bronx County
By: Maurice Sieradzki, Esq.
and
Seymour Rotker, Esq.

For the Defendant:

Joseph Arnstein, Esq.
1650 Broadway
New York, New York

Miriam Benson, C.S.R.
Official Court Reporter

Proceedings of October 23, 1969

The Court Clerk: People of the State of New York against Rudolph Santobello on the sentence calendar.

Mr. Sieradzki: Second call, your Honor. I believe counsel will be up.

The Court: Marked ready.

The Court Officer: Second call; all right?

The Court: All right.

The Court Clerk: People of the State of New York against Rudolph Santobello.

Mr. Arnstein: I understand we're to have a hearing on this motion today.

Mr. Rotker: Your Honor, I—

The Court: I don't see any necessity for a hearing.

Mr. Rotker: It was set down in the event the Court should feel there are any facts necessary to be elicited above and beyond the papers submitted by the defendant and his counsel.

The Court: What are you going to add to it besides your papers?

Mr. Arnstein: Well, I believe the District Attorney said he was going to call Mr. Fruchtman. I relied on that. I figured he would be here because—

The Court: As to what? What would he testify to? As to what?

Mr. Rotker: Your Honor, I don't know what he would testify to, but I had indicated that that's the possible witness that I would call. However, if the Court feels there is sufficient fact information before the Court in the papers, there is no necessity for a hearing.

The Court: Come up here.

Proceedings of October 23, 1969

(Whereupon Assistant District Attorney Rotker and Counsellor Arnstein approach the bench and confer with the Court off the record.)

The Court: October 29th.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Miriam Benson

Miriam Benson, C.S.R.
Official Court Reporter

70a

Proceedings of October 29, 1969

**Motion to Withdraw Plea
Possession of Gambling Records (misdemeanor)**

**SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XVIII**

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

October 29, 1969

Before: Hon. CHARLES MARKS, Justice

**Appearances:
None**

**Miriam Benson, C.S.R.
Official Court Reporter**

Proceedings of October 29, 1969

The Court Clerk: People of the State of New York against Rudolph Santobello on the sentence calendar.

The Court: I just received one brief. This went over to, I believe, November 19th. Isn't that the one that went over?

The Court Clerk: No, Judge, 10-29.

The Court: I know, but they were supposed to submit briefs. I got one brief this morning, but I didn't get it from the district attorney.

The Court Clerk: All right, Judge, the indictment on the case today, you want to put it over for the 19th?

The Court: Yes, November 19th.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Miriam Benson

Proceedings of November 26, 1969

**Motion to Withdraw Plea
Poss. of Gambling Records, Misd.**

**SUPREME COURT—BRONX COUNTY
TRIAL TERM—PART XX**

Ind. No. 3024—1968

PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO

Defendant.

November 26, 1969

Before: Hon. CHARLES MARKS, Justice

Appearances:

For the Defendant:

Joseph Aronstein, Esq.

Eugene Sattler
Official Court Reporter

Proceedings of November 26, 1969

The Court Clerk: People of the State of New York against Rudolph Santobello.

The Court: The motion to withdraw the plea is denied; and I am putting the sentence over to January 10th. Make that January 9th.

Mr. Aronstein: Will your Honor—does your Honor want me to prepare an order, just so that it will be in the record?

The Court: Prepare an order on that. Submit it to me. Bail continued.

The foregoing is certified to be a true and correct transcription of the original stenographic minutes in the above case.

/s/ Eugene Sattler

Eugene Sattler
Official Court Reporter

Proceedings of December 15, 1969

SUPREME COURT—STATE OF NEW YORK

PART XII—BRONX COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

RUDOLPH SANTOBELLO,

Defendant.

December 15, 1969

Bronx, New York

Before

Hon. DAVID Ross, Justice.

Appearances:

For the People:

Burton B. Roberts, Esq.

District Attorney, Bronx County

By: Assistant District Attorney Greenfield

For the Defendant:

J. Aronstein, Esq.

Ruth Urbanek
Court Reporter

Proceedings of December 15, 1969

Mr. Greenfield: If your Honor pleases, for the record, Santobello pleaded guilty and he sought to withdraw his plea of guilty before Judge Marx. His attorney made a motion on behalf of this defendant to withdraw his plea and we have been waiting for Judge Marx's decision. I believe these motions should be marked off the calendar pending any possible appeal the defendant might make to the withdrawal situation at the time of sentence.

Certified as a true and accurate transcript.

/s/ Ruth Urbanek

Ruth Urbanek
Court Reporter

**Letter from the Bronx County Clerk to the Clerk
of the Supreme Court of the United States
Concerning Certification of the Original Record
from the Supreme Court of the State of New
York, County of Bronx**

August 24, 1971

Honorable E. Robert Seaver
Clerk
Supreme Court of the United States
Washington, D.C. 20543

**Re: Rudolph Santobello v. New York
No. 1480, October Term, 1970**

Dear Mr. Seaver:

At the request of the Bronx County District Attorney's Office, I have been asked to communicate with you respecting the State Court record in the above matter which I certified on June 14, 1971, pursuant to your direction.

It has been called to my attention that the Appendix filed by the petitioner's appellate counsel, Irving Anolik, Esq. (pages 5a to 10a), contains printed reproductions of a notice of motion to withdraw a plea of guilty, dated September 23, 1969; the supporting affidavit of the petitioner Rudolph Santobello, and the supporting affirmation of the then defense counsel, Joseph Aronstein, Esq. However, the record as certified by me contains no reference to the said motion.

After a search made by my staff of the records of the Supreme Court of the State of New York, County of Bronx, the originals of the aforesaid papers cannot be located. However, ancillary records reveal that such a motion was made. According to those records, the motion returnable on October 8, 1969, was received on September 24, 1969.

Letter from the Bronx County Clerk

Justice Charles Marks, since retired, denied the motion on November 26, 1969, which fact is reflected in the Court's daily calendar and, I have been given to understand by the District Attorney, and in reporter's minutes for that day (reproduction of which, I am advised, will be included in the respondent's Supplemental Appendix). However it should be noted that the appropriate motion book kept by the Supreme Court of Bronx County does not reflect the disposition of the motion.

My investigation of this matter further indicates that members of my staff unsuccessfully conducted an intensive search, in January, 1970, for the original motion papers at the behest of the Bronx County District Attorney's Office. At my direction, another search for the missing papers was recently conducted but said search was also unsuccessful.

If there is any further information you may require of me in connection with the above, please so advise me and I will be glad to furnish the same.

Very truly yours,

Leo Levy
County Clerk
and
Clerk of the Supreme Court,
Bronx County

C.C. Honorable Burton B. Roberts
District Attorney, Bronx County

Irving Anolik, Esq.
225 Broadway
New York City, New York